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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

EFREN M. ZAMORA,) No. C-08-01340 SC
Plaintiff,)
v.)
UNITED STATES OF AMERICA,)
Defendant.)
THE FEDERAL DEFENDANT'S
ANSWER

For its Answer to Plaintiff's Complaint, Federal Defendant UNITED STATES ("Defendant") admits, denies, and alleges as follows:

1. Defendant lacks sufficient information to admit or deny the allegations of this paragraph and on that basis denies the allegations of this paragraph.

2. Admit.

3. This paragraph contains jurisdictional allegations to which no answer is required.

4. Defendant lacks sufficient information to admit or deny the allegations of this paragraph and on that basis denies the allegations of this paragraph.

5. Defendant lacks sufficient information to admit or deny the allegations of this paragraph and on that basis denies the allegations of this paragraph.

6. Defendant lacks sufficient information to admit or deny the allegations of this

1 paragraph and on that basis denies the allegations of this paragraph.

2 7. Defendant lacks sufficient information to admit or deny the allegations of this
 3 paragraph and on that basis denies the allegations of this paragraph.

4 8. Defendant lacks sufficient information to admit or deny the allegations of this
 5 paragraph and on that basis denies the allegations of this paragraph.

6 9. Deny.

7 10. Deny.

8 11. The Defendant admits that Plaintiff Zamora made an administrative claim for
 9 damages by submitting a Standard Form 95 Claim for Damage, Injury, or Death to the
 10 Department of Veterans Affairs. Defendant lacks sufficient information to admit or deny the
 11 allegation that Plaintiff Zamora submitted his administrative claim to the Veterans
 12 Administration Medical Center, 10535 Hospital Way, Mather, California 95655, and on that
 13 basis denies this allegation. Defendant denies that Zamora's administrative claim was rejected
 14 because no decision has been rendered on Zamora's claim.

15 Except as expressly admitted, all remaining allegations are denied. The paragraph
 16 beginning with WHEREFORE sets forth Plaintiff's prayer for relief to which no response is
 17 required. To the extent this paragraph is deemed to contain allegations of material fact, it is
 18 denied. No jury trial is available under the Federal Tort Claims Act.

19 All allegations not specifically responded to above are denied.

20 **AFFIRMATIVE DEFENSES**

21 **FIRST AFFIRMATIVE DEFENSE**

22 Federal Defendant denies that it or any of its agents or employees were negligent and/or
 23 breached any standard of care due to Plaintiff and/or engaged in any conduct that was the
 24 proximate cause of the injuries, damages, and losses allegedly incurred by Plaintiff. The Federal
 25 Defendant through its employees, exercised due care and diligence in all matters relevant to the
 26 subject matter of Plaintiff's complaint.

27 **SECOND AFFIRMATIVE DEFENSE**

28 Plaintiff's alleged injuries, if any, were proximately caused by Plaintiff's own negligent or

1 otherwise wrongful conduct.

2 **THIRD AFFIRMATIVE DEFENSE**

3 Any recovery or other award made against the United States herein must be reduced by
4 the percentage of fault of the plaintiff and/or other third party, and any recovery or other award
5 made against the United States herein for non-economic damages must be limited to the
6 percentage of fault, if any, of the United States.

7 **FOURTH AFFIRMATIVE DEFENSE**

8 Plaintiff may recover only those damages allowed under the law.

9 **FIFTH AFFIRMATIVE DEFENSE**

10 Federal Defendant is entitled to absolute, sovereign, and/or qualified immunity.

11 **SIXTH AFFIRMATIVE DEFENSE**

12 Pursuant to 28 U.S.C. § 2675, Plaintiffs are prohibited from claiming or recovering an
13 amount against the United States in excess of that which was set forth in any claim presented to
14 the United States.

15 **SEVENTH AFFIRMATIVE DEFENSE**

16 Pursuant to 28 U.S.C. § 2674, Plaintiff is proscribed from recovering any amount for
17 prejudgment interest or punitive damages against the United States.

18 **EIGHTH AFFIRMATIVE DEFENSE**

19 Under 28 U.S.C. §2412(d)(1)(A), Plaintiff cannot recover attorney's fees from the United
20 States.

21 **NINTH AFFIRMATIVE DEFENSE**

22 Pursuant to 28 U.S.C. § 2402, Plaintiff is not entitled to a jury trial.

24 **TENTH AFFIRMATIVE DEFENSE**

25 To the extent Plaintiff fails to state any claim on which relief can be granted, that claim
26 should be dismissed.

27 **ELEVENTH AFFIRMATIVE DEFENSE**

28 To the extent Plaintiff has failed to exhaust administrative remedies with respect to any

1 claim, that claim should be dismissed.

2 **TWELFTH AFFIRMATIVE DEFENSE**

3 Plaintiff's damages, if any, are barred by failure to mitigate.

4 **THIRTEENTH AFFIRMATIVE DEFENSE**

5 Federal Defendant contests the amount and/or necessity of any claim of damages for which
6 Plaintiff seeks relief in his complaint.

7 **FOURTEENTH AFFIRMATIVE DEFENSE**

8 Plaintiff's recovery, if any, is barred by the doctrines of unclean hands, laches, and
9 estoppel.

10 **FIFTEENTH AFFIRMATIVE DEFENSE**

11 Plaintiff's alleged injuries were proximately caused by the intervening or superseding acts
12 of someone other than an employee of the United States acting within the scope of his
13 employment.

14 **SIXTEENTH AFFIRMATIVE DEFENSE**

15 To the extent this action is brought pursuant to the Federal Tort Claims Act, the court
16 lacks subject matter jurisdiction over any defendant other than the Federal Defendant, including
17 but not limited to individual defendants.

18 **SEVENTEENTH AFFIRMATIVE DEFENSE**

19 Plaintiff's cause of action is barred by the statute of limitations.

20 **EIGHTEENTH AFFIRMATIVE DEFENSE**

21 Federal Defendant reserves the right to amend its Answer with additional defenses of
22 which it may become aware as discovery progresses and to raise any other matter constituting an
23 avoidance or affirmative defense.

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1 **PRAYER FOR RELIEF**

2 WHEREFORE, Federal Defendant requests that the Court enter judgment in favor of the
3 Federal Defendant, that the Complaint be dismissed with prejudice, and that the Federal
4 Defendant is granted such other and further relief as the Court may deem just and proper,
5 including recovery of all costs.

6
7 DATED: May 9, 2008

Respectfully submitted,

8 JOSEPH P. RUSSONIELLO
9 United States Attorney
/s/

10 MELISSA K. BROWN
11 Assistant United States Attorney

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that she is an employee of the Office of the United States Attorney for the Northern District of California and is a person of such age and discretion to be competent to serve papers. The undersigned further certifies that she is causing a copy of the following:

THE FEDERAL DEFENDANT'S ANSWER

Efren Zamora v. United States of America
C 08-1340 SC

to be served this date upon the party in this action by placing a true copy thereof in a sealed envelope, and served as follows:

✓ **FIRST CLASS MAIL** by placing such envelope(s) with postage thereon fully prepaid in the designated area for outgoing U.S. mail in accordance with this office's practice.

— **CERTIFIED MAIL** (#) by placing such envelope(s) with postage thereon fully prepaid in the designated area for outgoing U.S. mail in accordance with this office's practice.

PERSONAL SERVICE (BY MESSENGER)

FEDERAL EXPRESS via Priority Overnight

FACSIMILE (FAX) Telephone No.: See Below

to the party(ies) addressed as follows:

Thomas Gerald Quick
Attorney at Law
1901 Harrison Street, 9th Floor
Oakland, CA 94612

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed on May 9, 2008 at San Francisco, California.

MANIK BOWIE
Legal Assistant